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Attorney Docket No. 33229-200485

## REISSUE PATENT APPLICATION TRANSMITTAL

Address to: <b>Commissioner for Patents P. O. Box 1450 Patent Application Alexandria, VA 22313-1450</b>	Attorney Docket No.	33229-200485
	First Named Inventor	Xin LIU
	Original Patent Number	6,440,420
	Original Patent Issue Date (Month/Day/Year)	August 27, 2002
	Express Mail Label No.	

**APPLICATION FOR REISSUE OF:**  
(check applicable box) ☒ Utility Patent ☐ Design Patent ☐ Plant Patent

APPLICATION ELEMENTS (37 CFR 1.173)	ACCOMPANYING APPLICATION PARTS
1. <input checked="" type="checkbox"/> * Fee Transmittal Form (e.g., PTO/SB/56) (Submit an original, and a duplicate for fee processing)	7. <input checked="" type="checkbox"/> Statement of status/support for all changes to the claims. See 37 CFR 1.173(c).
2. <input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.	8. <input type="checkbox"/> Original U.S. Patent for surrender <input type="checkbox"/> Ribboned Original Patent Grant <input type="checkbox"/> Statement of Loss (PTO/SB/55)
3. <input checked="" type="checkbox"/> Specification and Claims in a double column copy of patent format (amended, if appropriate)	9. <input type="checkbox"/> Foreign Priority Claim (35 U.S.C. 119) (if applicable)
4. <input type="checkbox"/> Drawing(s) (proposed amendments, if appropriate)	10. <input checked="" type="checkbox"/> Information Disclosure Statement (IDS)/PTO-1449 <input checked="" type="checkbox"/> Copies of IDS Citations
5. <input checked="" type="checkbox"/> Reissue Oath / Declaration (original or copy) (37 C.F.R. § 1.175)(PTO/SB/51 or 52)	11. <input type="checkbox"/> English Translation of Reissue Oath/Declaration (if applicable)
6. Original U.S. Patent currently assigned? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If Yes, check applicable box(es))	12. <input checked="" type="checkbox"/> Preliminary Amendment
<input type="checkbox"/> Written Consent of all Assignees (PTO/SB/53)	13. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
<input type="checkbox"/> 37 C.F.R. § 3.73(b) Statement (PTO/SB/96) <input type="checkbox"/> Power of Attorney	14. <input checked="" type="checkbox"/> Other: <u>PETITION UNDER RULE 1.47(a):</u> <u>Statement of Non-assignment</u>

<b>14. CORRESPONDENCE ADDRESS</b>					
<input checked="" type="checkbox"/> Customer Number or Bar Code Label 26694 or <input type="checkbox"/> Correspondence address below					
Name	VENABLE				
Address	P.O. Box 34385				
City	Washington	State	D.C.	Zip Code	20043-9998
Country	U.S.A.	Telephone	(202) 344-4000	Fax	(202) 344-8300
NAME (Print/Type)	Fei-Fei Chao		Registration No. (Attorney/Agent)	43,538	
Signature	<i>Fei-Fei Chao</i>		Date	Feb. 5, 2004	

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Box Patent Application, Alexandria, VA 22313-1450.

PC Docs No. 517915

**VENABLE**  
ATTORNEYS AT LAW

17513 U.S. PTO  
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**REISSUE APPLICATION FEE TRANSMITTAL FORM**Docket Number (Optional)  
33229-200485**Claims as Filed - Part 1**

Claims in Patent	For	Number Filed in Reissue Application	(3) Number Extra	Small Entity		Other than a Small Entity	
				Rate	Fee	Rate	Fee
(A) 19	Total Claims (37 CFR 1.16(j)) Independent Claims (37 CFR 1.16(i))	(B) 24	**** 5	X\$9=	45	or	X\$ _____
(C) 1		(D) 1	* 0	X\$ _____			X\$ _____
Basic Fee (37 CFR 1.16(h))					\$385		\$ _____
Total Filing Fee					\$430	OR	\$ _____

**Claims as Amended - Part 2**

	(1) Claims Remaining After Amendment		(2) Highest Number Previously Paid For	(3) Extra Claims Present	Small Entity		Other than a Small Entity	
					Rate	Fee	Rate	Fee
Total Claims (37 CFR 1.16(j))	***	MINUS	** 20	*	X\$ _____		or	X\$ _____
Independent Claims (37 CFR 1.16(i))	***	MINUS	***** 1	=	X\$ _____			X\$ _____
Total Additional Fee					\$		OR	\$ _____

\* If the entry in (D) is less than the entry in (C), Write "0" in column 3.

\*\* If the "Highest Number of Total Claims Previously Paid For" is less than 20, Write "20" in this space.

\*\*\* After any cancellation of claims

\*\*\*\* If "A" is greater than 20, use (B - A); if "A" is 20 or less, use (B - 20).

\*\*\*\*\* "Highest Number of Independent Claims Previously Paid For" or Number of Independent Claims in Patent (C).

☒ Applicant claims small entity status. See 27 CFR 1.27.☐ Please charge Deposit Account No. \_\_\_\_\_ in the amount of \_\_\_\_\_.  
A duplicate copy of this sheet is enclosed.☒ The Commissioner is hereby authorized to charge any additional fees under 37 CFR 1.16 or 1.17 which may be required, or credit any overpayment to Deposit Account No. 22-0261.  
A duplicate copy of this sheet is enclosed.☒ A check in the amount of \$ 560 to cover the filing / additional fee is enclosed.☐ Payment by credit card. Form PTO-2038 is attached.**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on form PTO-2038.**

Feb. 5, 2004

Date

Signature of Applicant, Attorney or Agent of Record

Fei-Fei Chao, Ph.D.

Typed or printed name

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE REISSUE APPLICATION OF :

Xin LIU and Peter Chee-Keung CHUNG

Patent No. : 6,440,420

TC/A.U. : 1651

Issued : August 27, 2002

Examiner : S.C. Coe

For : METHOD FOR EXTRACTING OLEAGINOUS SUBSTANCES FROM  
GERMINATION-ACTIVATED *GANODERMA LUCIDUM* SPORES

Docket No. : 33229-200485

Customer No. **\*26694\***

PATENT TRADEMARK OFFICE

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313  
Mail Stop REISSUE

**PETITION TO FILE A REISSUE APPLICATION WHEN AN INVENTOR  
REFUSES TO SIGN OR CANNOT BE REACHED UNDER RULE 1.47(a)**

Sir:

This Petition is filed under 37 C.F.R. § 1.47(a) and in accordance with the guidance given in MPEP 409.03(c) to request that the above-identified re-issue application of U.S. Patent No. 6,440,420 (hereinafter the '420 patent) be granted a filing date and forwarded for examination. The factual evidence leading to the filing of this re-issue application is described as follows:

1. The '420 patent was filed under three inventors' names, Dr. Peter Chee-Keung Chung (hereinafter "the Applicant" or "Dr. Chung"), Mr. Xin Liu (hereinafter "Mr. Liu"), and Ms. Xia-Ni Huang (hereinafter "Ms. Huang"). On information and belief, Ms. Huang is Mr.

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Liu's wife. Also on information and belief, no assignment has been submitted and recorded in connection with the '420 patent to the U.S. PTO.

2. The '420 patent was filed on March 12, 2001 as U.S. Serial No. 09/810,213 (hereinafter the '213 application), and issued into a patent on August 27, 2002. The undersigned attorney was the attorney of record for the '213 application. The oath/declaration in connection with the filing of the '213 application was signed by all three inventors. A copy of the oath/declaration signed by all of the inventors in connection with the '213 application is attached as Exhibit 1.

3. Prior to the filing of the '213 application, Applicant and Mr. Liu have filed two U.S. applications together, which resulted in U.S. Patent Nos. 6,316,002 (hereinafter the '002 patent), issued on November 13, 2001, and 6,468,542 (hereinafter the '542 patent), issued on October 22, 2002. The undersigned attorney was the attorney of record for both of the '002 patent and the '542 patent. The '002 and the '542 patents are related to the '213 application insofar as these inventions are directed to the same subject matter, i.e., sporoderm-broken ganoderma spores.

4. On information and belief, on or about February 27, 2003, unknown to Applicant, Mr. Liu retained counsel Mr. Otto Lee (Registration No. 37,871) of the Intellectual Property Law GRP LLP, having a business address of 12 South First St. Ste. 1205, San Jose, CA 95113 (Tel: 408-286-8933), to unilaterally file reissue applications on the '002 patent (Re. S.N. 10/376,845) and the '542 patent (Re. S.N. 10/376,692). Applicant was never notified by Mr. Liu's counsel or the PTO regarding Mr. Liu's filing of the reissue applications.

5. On or around May 2003, Applicant and Mr. Liu, individually and/or through their respective organization and trade company, filed separate lawsuits against each other, in

Guandong Province of China and Hong Kong. On information and belief, these lawsuits are currently pending.

6. On January 12, 2004, the undersigned telephoned Mr. Otto Lee to ask if he would be willing to accept documents for Mr. Liu. Mr. Lee gracefully agreed. On the same date, the undersigned sent Mr. Lee a letter, attaching the prepared Reissue Oath/Declaration Forms (with signature lines for both Mr. Liu and Dr. Chung) and the "Preliminary Amendment, Status of Claims, and Statement of Support" documents for Applicant's reissue applications on both of the '002 and the '542 patents. In the letter, the undersigned requested that Mr. Lee let her know whether or not Mr. Liu would sign the Oath/Declaration Form on or before January 14, 2004.

7. On January 14, 2004, Mr. Lee telephoned the undersigned to inform her that he had spoken to Mr. Liu's counsel in Hong Kong about the undersigned's request. According to Mr. Lee, Mr. Liu's counsel in Hong Kong indicated that she would advise Mr. Liu not to sign the Oath/Declaration Form at this time. Therefore, Mr. Lee advised the undersigned to file the reissue applications claiming that Mr. Liu refused to sign the Oath/Declaration Form. Mr. Lee also indicated that should Mr. Liu change his position, he would inform the undersigned by telephone immediately.

8. Applicant therefore proceeded with filing his reissue applications on the '002 and the '542 patents on January 14 and 15, 2004. Until this date, the undersigned has not received further notice from Mr. Lee suggesting that Mr. Liu has decided to join with Applicant in his reissue applications.

9. On January 30, 2004, the undersigned wrote to Mr. Otto Lee again, attaching a courtesy copy of an oath/declaration form prepared for the reissue application and the "Preliminary Amendment, Status of claims, and Statement of Support" document prepared under

37 CFR § 1.173 for the '420 patent, requesting that Mr. Lee let her know whether or not Mr. Liu and Ms. Huang would sign the Oath/Declaration Form on or before February 3, 2004. A copy of the cover letter to Mr. Otto Lee is attached as Exhibit 2.

10. By the end of February 3, 2004, the undersigned had not received any response from Mr. Lee.

11. On February 4, 2004, the undersigned telephoned Mr. Lee. His secretary Eleanore Jehung answered the call and told the undersigned that Mr. Lee had been in San Diego since the beginning of the week and would not return until February 18, 2004. However, she offered to contact him and indicated that she would let the undersigned know about his response as soon as she could.

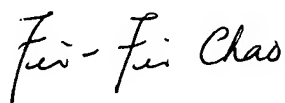
12. The undersigned waited until 6:30 pm (Eastern time), February 4, 2004, to contact Mr. Lee's office again since she did not receive any return phone call from Ms. Jehung. Ms. Jehung answered the phone call again. She said that she asked Ms. Gigi Capuyan, another attorney at Mr. Lee's office, to write an e-mail to Mr. Lee asking for his response. The undersigned asked to speak to Ms. Capuyan. However, at the time, Ms. Capuyan was in a meeting with clients. Ms. Jehung offered to remind Ms. Capuyan to return the undersigned's phone call.

13. Around 7:00 pm (Eastern time), February 4, 2004, Ms. Capuyan called the undersigned. She said that Mr. Lee confirmed that he received the documents sent by the undersigned on January 30, 2004 and had immediately forwarded the documents to Mr. Liu's counsel in Hong Kong. However, she said that as of this time, Mr. Lee has not received a response from the client.

14. The undersigned then told Ms. Capuyan that she would file the reissue application under the assumption that Mr. Liu and Ms. Huang refused to sign the oath/declaration and that a petition under 37 CFR § 1.47(a) would be filed together with the reissue application. In the event that Mr. Liu and Ms. Huang decide to join in in the future, Applicant would be glad to file a supplemental oath/declaration with their signatures with the PTO. A confirmation letter, together with all the documents filed in connection with this reissue application, will be mailed to Ms. Gigi Capuyan after the filing of the reissue application to allow her to keep Mr. Liu and Ms. Huang informed.

In view of the above, it is respectfully requested that the filing of the Oath/Declaration and Statement of Non-Assignment with one out of three inventors' signatures, together with a check which covers the petition fee of \$130 under 37 CFR § 1.17(i) and the basic filing fee, be accepted and that the application be considered on the merits. If no check is attached or if the check is for an insufficient amount, please charge the balance due to our Deposit Account No. 22-0261.

Respectfully submitted,

A handwritten signature in black ink that reads "Fei-Fei Chao". The signature is written in a cursive, flowing style.

Fei-Fei Chao, Ph.D.  
Reg. No. 43,538

Date: February 5, 2004  
Fei-Fei Chao, Ph.D.  
Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, D.C. 20004  
Tel.: (202) 344-8011

DC2DOCS#519323

Fei-Fei Chao, Ph.D.  
(202)-344-8011  
[fchao@venable.com](mailto:fchao@venable.com)

January 30, 2004

**VIA FACSIMILE AND UPS OVERNIGHT MAIL**Mr. Otto Lee  
Intellectual Property Law Group LLP  
Old Bank of America Building  
12 South First Street  
Twelfth Floor Suite 1205  
San Jose, California 95113Re: Dr. Chung's Reissue Applications of  
U.S. Patent No. 6,440,420

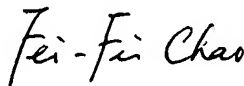
Dear Mr. Lee:

In addition to the filing of reissue applications on U.S. Patent No. 6,316,002 and 6,468,542, our client Dr. Peter Chee-Keung Chung now decides to file a reissue application on U.S. Patent No. 6,440,420 (hereinafter the '420 patent). Because the '420 patent includes, in addition to Dr. Chung, Mr. Xin Liu and his wife, Ms. Xiao-Ni Huang, as co-inventors, and as I indicated in my last letter to you dated January 12, 2004, that Mr. Liu and Dr. Chung are in litigation in both China and Hong Kong, we believe that it would be more appropriate for us to communicate with you, instead of Mr. Liu and Ms. Huang, to request for Mr. Liu's and Ms. Huang's signatures on the Oath/Declaration form accompanying the reissue application for the '420 patent. Enclosed please find a copy of the Oath/Declaration form and the "Preliminary Amendment, Status of Claims, and Statement of Support" document that we prepared for the '420 application.

We intend to move our application promptly. Therefore, please let us know by return telephone, e-mail or fax, on or before **February 3, 2004**, whether Mr. Liu and Ms. Huang are willing to sign on the Oath/Declaration or not. If so, please return their signed Oath/Declaration form to us by fax, no later than **February 3, 2004**, or I will assume that they are unwilling to sign so that we will proceed with the filing of the reissue application with a petition under 37 CFR § 1.47(a).

Thank you for your consideration and we look forward to hearing from you soon.

Very truly yours,



Fei-Fei Chao, Ph.D.

Enclosure  
DCDocs2/519241